

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion requested by)	No. 75-123
Wayne T. Carothers, Legislative)	September 4, 1975
Advocate, California Teachers)	
Association)	
)	

BY THE COMMISSION: We have been asked the following questions by Wayne T. Carothers, a registered lobbyist for the California Teachers Association:

(1) As a registered lobbyist in California, are there any legal restrictions placed upon me which would prohibit me from filing and running for public office? If so, what are the restrictions?

(2) As a lobbyist running for public office, are there any legal restrictions which would prohibit me from soliciting campaign contributions in my own behalf?

(3) As a lobbyist running for public office, do I create any legal liabilities for my employer if I continue to be employed and salaried while I am a candidate campaigning in my own behalf, on my own time?

Mr. Carothers has announced his intention to run for elective state office. Consequently, this opinion does not reach the issues raised if a lobbyist chooses to run for local or federal offices.

CONCLUSION

(1) The Political Reform Act contains no restrictions that would prevent a lobbyist from running for public office.

(2) The prohibitions contained in Government Code Section 86202^{1/} do not apply when the lobbyist makes, acts

^{1/}
All statutory references are to the Government Code unless otherwise noted.

as an agent or intermediary in the making of, or arranges for the making of the contribution to himself, or his controlled committees.

(3) The fact that a lobbyist runs for public office does not create any legal liabilities for the lobbyist's employer in addition to the employer's normal disclosure obligations.

ANALYSIS

The Political Reform Act (Sections 81000, et seq., hereinafter referred to as "the Act") contains no restrictions that prohibit a lobbyist from filing and running for public office. Under the Act, the only persons prohibited from seeking elective office are those who serve as members of the Fair Political Practices Commission, Section 83105, and those who are convicted of a misdemeanor under the Act, Section 91002. Neither of these prohibitions applies to Mr. Carothers.

As a registered lobbyist, Mr. Carothers is subject to the restrictions and reporting requirements contained in Chapter 6 of the Political Reform Act, Sections 86100, et seq. Section 86202 prohibits a lobbyist from making a contribution, acting as an agent or intermediary in the making of any contribution, or arranging for the making of a campaign contribution.^{2/} However, neither the express language nor the purposes of the Act support a conclusion that the prohibitions contained in Section 86202 apply to a lobbyist who makes, acts as agent or intermediary, or arranges for the making of contributions to himself.

Initially, we observe that such a conclusion would effectively prevent a lobbyist from running for office. The lobbyist would be prevented from using any of his own money in the election if he were subject to the restriction against making a contribution. He would be prohibited from soliciting contributions or carrying on other fund-raising activities by the prohibitions against acting as an agent or intermediary, or arranging for the making of any contribution. However, as observed earlier, the Act contains only two narrowly-drawn

^{2/} Contribution as used in Section 86202 refers only to a contribution made to a state candidate, committee supporting a state candidate, or an elected state officer. Section 86200.

provisions prohibiting certain persons from becoming candidates and neither of these provisions prohibits lobbyists from seeking elective office.

Interpreting Section 86202 to prohibit a lobbyist from soliciting contributions in his own behalf also is inconsistent with the purposes of the statute. In passing the Act, the people found that:

The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.

Section 81002(c).

Accordingly, the purpose of prohibiting lobbyists from contributing to state candidates is to prevent any possibility that the lobbyist will gain undue influence if the candidate is elected. This consideration is not applicable if the lobbyist himself is the candidate.

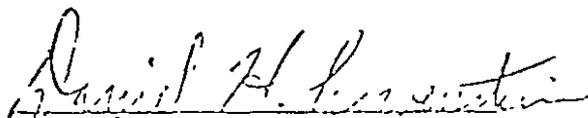
For these reasons, we conclude that Sections 86202 and 86204 do not apply to the lobbyist who becomes a state candidate and solicits campaign contributions for his own campaign. However, this conclusion applies only to contributions made to the lobbyist or to his controlled committee for use in the lobbyist's campaign. Such funds may not be given to any other state candidate, elected state officer, legislative official or agency official.

Finally, we observe that a lobbyist who runs for office does not create any legal liabilities for his employer but may impose additional reporting requirements on the employer. Section 86108 requires employers of lobbyists to file periodic reports. Section 86109 requires, among other information, that the filer disclose information concerning exchanges with state candidates if the value of either side of the exchange exceeds \$1,000 (Section 86109(d); see also 2 Cal. Admin. Code Section 18650). The salary paid to Mr. Carothers is an exchange with a state candidate and must be reported. Furthermore, the same payment must be disclosed under Section 86109(h), which requires the employer to list:

The name of each lobbyist employed or retained by the person making the report, together with the total amount paid to each lobbyist and the portion of that amount which was paid for specific purposes, including salary, fees, general expenses and any special expenses.

Thus, if Mr. Carothers continues to work as a legislative advocate during the time that he is running for elective state office, his employer must report salary payments to him both as exchanges with a state candidate and as a lobbyist's salary.

Approved by the Commission on September 4, 1975.
Concurring: Bresnahan, Carpenter, Lowenstein, Miller
and Waters.


Daniel H. Lowenstein
Chairman